



# Guidance Document 17-06

Adopted August 17, 2017

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**SUBJECT:** Investigation of a Grievance When Subject Report is Involved in Litigation

**LEGAL REFERENCE:** Neb. Rev. Stat. §76-2239 (Laws 2015, LB139, § 60); 298 NAC, Ch. 8, § 001.01 (2017)

## SUMMARY OF ACTION

N/A

## BACKGROUND

During its May 11, 2017 strategic planning meeting, the Nebraska Real Property Appraiser Board ("Board") discussed investigating grievances when the subject report is involved in litigation. The Board concluded that, often, the two sides in litigation involving real property exaggerate value disputes into alleged violations of the Uniform Standards of Appraisal Practice ("USPAP") to discredit the opposing side to gain an advantage in the litigation. The Board also concluded that proceeding with investigation of these matters prior to the completion of litigation is a potential waste of the Board's resources, as details important to the investigation may be revealed during the litigation process. Finally, the Board concluded that both sides involved in litigation pertaining to real property typically submit an appraisal report as evidence in support of each side's position.

The Board discussed this matter further at its July 20, 2017 regular meeting, and concluded that the guidance should focus on the report that is the subject of the grievance only; not reports for both sides of the matter under litigation. It is the Board's position that a grievance could be filed by any person involved in the matter being litigated and opposing appraisers may not have any involvement with the filing of a grievance.

## ANALYSIS

Per N.R.S. § 76-2239 (1), *“The board may, upon its own motion, and shall, upon the written complaint of any aggrieved person, cause an investigation to be made with respect to an alleged violation of the Real Property Appraiser Act. The board may revoke or suspend the credential or otherwise discipline a credential holder, revoke or suspend a qualifying or continuing education course or activity, deny any application, or issue a cease and desist order for any violation of the Real Property Appraiser Act. Any disciplinary action taken against a credentialed real property appraiser, including any action that limits a credentialed real property appraiser's ability to practice, shall be reported to federal authorities as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Upon receipt of information indicating that a person may have violated any provision of the Real Property Appraiser Act, the board shall make an investigation of the facts to determine whether or not there is evidence of a violation. If technical assistance is required, the board may contract with or use qualified persons.”*

In addition, 298 NAC, CH 8, 001.01 states, *“The Board will not enter into disputes that solely concern the valuation of any property.”*

The Board is obligated through N.R.S. § 76-2239 (1) to cause an investigation to be made with respect to an alleged violation of the real property appraiser act upon receipt of a written grievance. However, 298 NAC, CH 8, 001.01 indicates that the Board will not enter into disputes that solely concern the valuation of property. As mentioned above, the two sides in litigation involving real property may exaggerate value disputes into alleged violations of USPAP to discredit the opposing side to gain an advantage in the litigation. In addition, details important to the investigation may be revealed during the litigation process that indicate whether the grievance is based on alleged violations of USPAP or a value dispute.

Appraisal Subcommittee Policy Statement 7 (B) (1), effective June 1, 2013, declares, *“States must process complaints of appraiser misconduct or wrongdoing in a timely manner to ensure effective supervision of appraisers, and when appropriate, that incompetent or unethical appraisers are not allowed to continue their appraisal practice. Absent special documented circumstances, final administrative decisions regarding complaints must occur within one year (12 months) of the complaint filing date. Special documented circumstances are those extenuating circumstances (fully documented) beyond the control of the State agency that delays normal processing of a complaint such as: complaints involving a criminal investigation by a law enforcement agency when the investigative agency requests that the State refrain from proceeding; final disposition that has been appealed to a higher court; documented medical condition of the respondent; ancillary civil litigation; and complex fraud cases that involve multiple individuals and reports. Such special documented circumstances also include those periods when State rules require referral of a complaint to another State entity for review and the State agency is precluded from further processing of the complaint until it is returned. In that circumstance, the State agency should document the required referral and the time period during which the complaint was not under its control or authority.”*

The Appraisal Subcommittee requires that the final administrative decision (dismiss, proceed with formal charges) regarding a grievance must be submitted within one year of the grievance filing date; however, the ASC also allows for fully documented extenuating circumstances, which includes, among other reasons, ancillary civil litigation.

ASC Policy Statement 7 (B) (2) says in part, *“States must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the complaint.”*

In order to properly analyze a grievance it would be in the Board’s best interest to postpone such analysis until completion of litigation.

## **GUIDANCE**

In order to ensure that a grievance is properly analyzed on the merits of alleged appraiser misconduct or wrongdoing, and not due to a dispute of value, any grievance received by the Board in which the subject report is found to be involved in litigation, at the time the grievance is filed or at any time during an investigation, will be placed on a hold status by the Board until the completion of litigation.

If the respondent has not been notified that a grievance has been filed against him or her prior to the time that the investigative staff obtains information evidencing that the subject report is found to be involved in litigation, he or she will not be notified of the status of the grievance unless the Board directs otherwise. At any time after the respondent is notified that a grievance has been filed against him or her, the respondent will be notified in writing that the grievance has been placed on hold status by the Board until the completion of litigation. The complainant will also be notified in writing that the grievance has been placed on hold status by the Board until the completion of litigation at the time the grievance is placed on hold status.

If the subject report is found to be involved in litigation prior to the submission of investigative staff’s recommendation to the Board as to whether sufficient evidence exists to proceed with an investigation or whether the grievance should be dismissed, the investigative staff need only provide notice to the Board that the subject appraisal report of the grievance is involved in litigation.

Once the investigative staff obtains information evidencing completion of the litigation, the investigative staff’s analysis of the grievance will continue in accordance to the Board’s investigative procedures and Chapter 8 in Title 298 of the Nebraska Administrative Code. The next motion of the Board pertaining to this matter will officially remove the hold status.